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Palge Trautwein

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Ravalli County District Court

STATE OF MONTANA

By: Timothy Nydell

DV-41-2021-0000386-PI

Lmt. Jennifer B.

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5 Attorney for Plaintiff

7 **MONTANA TWENTY-FIRST DISTRICT COURT,**
8 **RAVALLI COUNTY**

9 HYDI CUNNINGHAM,
10 Plaintiff,
11 vs.
12
13 MANITO SUPER 1 FOODS, INC. d/b/a
14 HAMILTON SUPER 1 FOODS,
15 Defendant.

Cause No.: DV-41-2021-386-PI
Dept. No.: 2

**FIRST AMENDED
COMPLAINT and DEMAND
FOR JURY TRIAL**

16 COMES NOW the Plaintiff, Hydi Cunningham ("Cunningham"), by and
17 through her counsel of TIPP COBURN & ASSOCIATES PC, and for her
18 Complaint against the Defendant, states and alleges as follows:

- 19 1. The Plaintiff Hydi Cunningham is a resident of the State of Montana, Ravalli
20 County.
21 2. Defendant Manito Super 1 Foods, Inc. is a Washington corporation, which
22 upon information and belief operates under various assumed business names,
23 including Hamilton Super 1 Foods. Defendant Manito Super 1 Foods, Inc. has
24 been conducting, and continues to conduct, business in the State of Montana, and
25 is authorized to do business in the State of Montana. The registered agent for the
26 Defendant is Barry Lemon, at 1346 Highway 2 East, Kalispell, MT 59901.
27 3. Jurisdiction and venue are proper in this Court.

FIRST AMENDED COMPLAINT and DEMAND FOR JURY TRIAL - Page 1

1 4. The Plaintiff has timely filed her Complaint and First Amended Complaint
2 in this matter.

3 5. On or around April 4, 2019, Plaintiff Hydi Cunningham was shopping at the
4 Defendant's grocery store located at 1131 N 1st St, Hamilton, Montana 59840,
5 when she tripped on an unsafe condition in an aisle within the store, causing her to
6 fall and injure herself.

7 6. As a result of the above-described incident, Cunningham has been injured
8 and has suffered, and continues to suffer, damages in an amount to be determined
9 at trial.

10 7. To the best of the Plaintiff's knowledge, information and belief, at the time
11 of Cunningham's above-described fall and injuries, the Defendant was the
12 operator, possessor, and owner of the grocery store located at 1131 N 1st St,
13 Hamilton, Montana 59840.

14 8. The Defendant has a duty to use ordinary care in maintaining the premises
15 located at 1131 N 1st St, Hamilton, Montana 59840 in a reasonably safe condition.
16 Furthermore, the Defendant has a duty to warn people on the above-described
17 property of any hidden or lurking dangers. Additionally, the Defendant has a duty
18 to its patrons to guard against injuries caused by open and obvious dangers if it
19 should anticipate harm coming to its patrons despite the obviousness of the
20 dangers.

21 9. The Defendant negligently failed to keep its premises in a reasonably safe
22 condition by, among other things, allowing a wooden board within and upon the
23 store aisle where patrons were meant to travel in order shop within the Defendant's
24 grocery store.

25 10. The Defendant negligently failed to warn its patrons, including Cunningham,
26 of the dangers posed by the above-described unsafe condition.

27 11. The Defendant negligently failed to take adequate measures to prevent the

injuries suffered by Hydi Cunningham upon its premises.

12. By failing to keep its premises in a reasonably safe condition, failing to properly warn Cunningham of the dangers posed by the above-described unsafe condition, and by failing to take adequate protective measures to prevent the injuries suffered by Cunningham, the Defendant breached the duties it owed to Hydi Cunningham.

13. Hydi Cunningham has suffered, and continues to suffer, damages as a result of the Defendant's above-described breaches.

14. The Defendant is liable for the actual, general, and special damages Hydi Cunningham has suffered as a result of the Defendant's above-described breaches.

WHEREFORE, Plaintiff prays for judgment against the Defendant as follows:

A. For Plaintiff Hydi Cunningham's actual damages in an amount to be determined at trial;

B. For Plaintiff Hydi Cunningham's special damages in an amount to be determined at trial;

C. For Plaintiff Hydi Cunningham's general damages in an amount to be determined at trial; and

D. For such other and further relief as may be determined just and equitable by this Court and in compliance with the laws of the State of Montana.

DATED this 17th day of February, 2022.

TIPP COBURN & ASSOCIATES PC

/s/ Torrance L. Coburn

Torrance L. Coburn

Attorney for Plaintiff

FIRST AMENDED COMPLAINT and DEMAND FOR JURY TRIAL - Page 3

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DEMAND FOR JURY TRIAL

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COMES NOW the Plaintiff, by and through counsel of TIPP COBURN &
ASSOCIATES PC, and demands a jury trial on all issues of fact in the above case.

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DATED this 17th day of February, 2022.

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TIPP COBURN & ASSOCIATES PC

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/s/ Torrance L. Coburn _____

Torrance L. Coburn
Attorney for Plaintiff

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Issued

**MONTANA TWENTY-FIRST DISTRICT COURT,
RAVALLI COUNTY**

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Cause No.: DV-41-2021-0000386-PI
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AMENDED SUMMONS

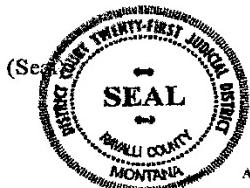
THE STATE OF MONTANA SENDS GREETINGS TO THE ABOVE-NAMED DEFENDANT: Manito Super 1 Foods, Inc. d/b/a Hamilton Super 1 Foods

17 **YOU, THE DEFENDANT, ARE HEREBY SUMMONED** to answer the
18 Complaint in this action which is filed in the office of the above-named Court, a
19 copy of which is herewith served upon you, and to file your answer and serve a
20 copy thereof upon Plaintiff's attorney within 21 days after the service of this
21 summons, exclusive of the day of service; and in case of your failure to appear or
22 answer, judgment will be taken against you by default, for the relief demanded in
23 the Complaint.

GIVEN under my hand this 17th day of February, 2022.

Paige Trautwein
CLERK OF COURT

By: *[Signature]* Deputy Clerk



A MENTIONED SUMMERS - 1